IN THE HIGH COURT OF DELHI

FAO.No.421/2007

UOI ..... Appellant
! through: None

VERSUS

$ Banti Kumar @ Banti Kumar Singh.....Respondent
^ through: None

% DATE OF DECISION: 19.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

PRADEEP NANDRAJOG, J. (Oral)

1. The appeal lays a challenge to the order dated 27.7.2007 passed by the Railway Claims Tribunal awarding a sum of Rs.4 lac to the claimant.

2. Claim petition was filed by the respondent Banti Kumar stating that he was a bona fide passenger on Train No.2304, New Delhi Howrah Poorva Express on 30.6.2005. He stated that he was proceeding from New Delhi to Patna. That when the untoward incident in question took place the bogie was over crowded. The train was approaching Patna Junction. He and other passengers were near the gate of the compartment to disembark. Due to heavy

rush passengers were jostling with each other. Such was the intensity of the heavy rush and jostling that he was thrown out of the running train and as a result both legs were injured. He suffered amputation of lower limbs.

3. At the trial, Banti Kumar successfully established his status of being a bona fide passenger, in that, he produced the ticket which entitled him to undertake the journey from New Delhi to Patna Junction.

4. On the issue whether he was responsible for what had happened and whether the accident was an untoward incident as per Section 123(c) (2) of the Railways Act, parties debated with reference to the decision of the Supreme Court reported as 2002 ACJ 841 (SC) *N.Parameswaran Pillai Vs. UOI.* The debate between the parties was :- what was the effect of the train being over crowded resulting in intense jostling by the passengers in the compartment?

5. The Tribunal has opined that if Railway authorities allowed excess number of passengers to board the bogie which excess number results in jostling, Railway authorities would be responsible for what had happened.

6. On the issue of quantification, with reference to the disability certificate Ex. AW1/5, keeping in view the schedule prescribed under the Act learned Tribunal has assessed the compensation as afore-noted.

7. In appeal points which have been urged related to the status of the claimant as a bona fide passenger and whether he was responsible, due to acts of negligence and carelessness, for what had happened.

8. On the issue of the claimant being a bona fide passenger suffice would it be to state that the Railway ticket produced by him was proof of his status. On the issue of negligence and carelessness, the testimony of the injured to the effect that the bogie was over crowded and due to jostling in the bogie he lost balance and fell down, it cannot be said that the finding returned is wrong. It is in consonance with the decision of the Supreme Court reported in *N.Parameshwaran Dillai's* case.

9. I find no merits in the appeal.

10. Dismissed.

November 19, 2007 **PRADEEP NANDRAJOG, J.**
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